

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	File No. EB-02-TC-097
	)	
Triax Midwest Associates, LP	)	CUID No. IL0159 (Clinton)
	)	
Petition for Reconsideration	)	

**ORDER**

**Adopted: September 30, 2002**

**Released: October 1, 2002**

By the Chief, Enforcement Bureau:<sup>1</sup>

1. In this Order, we consider a petition for reconsideration ("Petition") of Cable Services Bureau Order, DA 97-2068 ("Prior Order"),<sup>2</sup> filed with the Federal Communications Commission ("Commission") by the above-referenced operator ("Operator").<sup>3</sup> The Prior Order resolved a complaint filed against Operator's cable programming services tier ("CPST") rates in the community referenced above. In this Order we grant Operator's Petition in part and modify the Prior Order.

2. Under the provisions of the Communications Act<sup>4</sup> that were in effect at the time the complaints were filed, the Commission is authorized to review the CPST rates of cable systems not subject to effective competition to ensure that rates charged are not unreasonable. The Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act")<sup>5</sup> and the Commission's rules required the Commission to review CPST rates upon the filing of a valid complaint by a subscriber or local franchising authority ("LFA"). The Telecommunications Act of 1996 ("1996 Act"),<sup>6</sup> and the Commission's rules implementing the legislation ("Interim Rules"),<sup>7</sup> required that a complaint against the CPST rate be filed with the Commission by an LFA that has received more than one subscriber complaint. The filing of a valid complaint triggers an obligation upon the cable operator to file a justification of its CPST rates.<sup>8</sup> If the

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<sup>1</sup> Effective March 25, 2002, the Commission transferred responsibility for resolving cable programming services tier rate complaints from the former Cable Services Bureau to the Enforcement Bureau. *See Establishment of the Media Bureau, the Wireline Competition Bureau and the Consumer and Governmental Affairs Bureau, Reorganization of the International Bureau and Other Organizational Changes*, FCC 02-10, 17 FCC Rcd 4672 (2002).

<sup>2</sup> *See In The Matter of Triax Midwest Associates, LP*, DA 97-2068, 13 FCC Rcd 6017 (CSB 1998).

<sup>3</sup> The term "Operator" includes Operator's successors and predecessors in interest.

<sup>4</sup> 47 U.S.C. §543(c) (1996).

<sup>5</sup> Pub. L. No. 102-385, 106 Stat. 1460 (1992).

<sup>6</sup> Pub. L. No. 104-104, 110 Stat. 56 (1996).

<sup>7</sup> *See Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 5937 (1996).

<sup>8</sup> *See* Section 76.956 of the Commission's rules, 47 C.F.R. §76.956.

Commission finds the rate to be unreasonable, it shall determine the correct rate and any refund liability.<sup>9</sup>

3. In its petition, Operator argues that the Prior Order contained clerical errors. Specifically, Operator argues that the actual CPST rates identified in the Prior Order included franchise fees. Operator asserts that, when the actual CPST rates are calculated without franchise fees, Operator's total overcharges for the period under review are *de minimis*. Upon review of the Prior Order and the record herein, we agree with Operator that the total overcharges are *de minimis* and it would not be in the public interest to order refunds. Therefore, we modify the Prior Order to exclude any refund liability. Because our resolution of this issue disposes of Operator's refund liability, we decline to address any other issues raised by Operator in its Petition.

4. Accordingly, IT IS ORDERED, pursuant to Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, that the petition for reconsideration filed by Operator is GRANTED IN PART TO THE EXTENT INDICATED HEREIN.

5 IT IS FURTHER ORDERED, pursuant to Sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311, that *In The Matter of Triax Midwest Associates, LP*, DA 97-2068, 13 FCC Rcd 6017 (CSB 1998) IS MODIFIED TO THE EXTENT INDICATED HEREIN.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

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<sup>9</sup> See Section 76.957 of the Commission's rules, 47 C.F.R. § 76.957.